

The Town of
**Leesburg,
Virginia**

JOHN WELLS
Town Manager

NOV 16 2010

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November 8, 2010

Mailed U.S. Postal Service Certified Mail 11/8/10
& Submitted by Email to vabaytmdl@dc.virginia.gov
Water Docket - Submitted Online to www.regulations.gov

Environmental Protection Agency
Mailcode: 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Department of Conservation and Recreation
Commonwealth of Virginia
203 Governor Street
Richmond, VA 23219

Re: Environmental Protection Agency Water Docket ID No. EPA-R03-OW-2010-0736, Draft
Total Maximum Daily Load for the Chesapeake Bay; and Virginia Chesapeake Bay
Watershed Implementation Plan

To Whom It May Concern:

Thank you for the opportunity to comment on the Environmental Protection Agency (EPA) Draft Total Maximum Daily Load (TMDL) for the Chesapeake Bay and Virginia's WIP. Before getting into specifics, I think that some background about the Town of Leesburg (the Town) would be helpful. Established in 1758, Leesburg is the seat of government for Loudoun County, Virginia, one of the fastest growing counties in the country. The Town has held on to the authentic sense of place, grounded in our 250 years of history, making Leesburg a real hometown. Town character is of paramount importance to Leesburg. In particular, the Old and Historic District is the basis of Leesburg's identity. The pressures for growth in the Town are the result of the robust regional economy that will continue to draw more businesses, government jobs and residents. Leesburg's challenge and planning vision is to accommodate its share of that growth while retaining and enhancing the Town's character and quality of life.

The Town owns and operates a Municipal Wastewater Treatment Plant ("WWTP") that cleans and discharges highly-treated wastewater within the Chesapeake Bay watershed pursuant to a State-issued National Pollutant Discharge Elimination System ("NPDES") permit.

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The Town is doing their part for the Chesapeake Bay restoration. In fact, our WWTP was upgraded several years ago consistent with Virginia regulations for nutrient removal at a cost of \$17.5 million. A more recent upgrade and expansion including nutrient removal cost \$37.5 million. Our Operation and Maintenance (O&M) costs have increased substantially because of the additional chemical feed, solids handling, energy use, and equipment and treatment processes maintenance. A further upgrade to the backstop levels included in the draft TMDL is estimated to cost approximately \$20 million dollars and will add thousands of dollars per month to our O&M costs. We are a small town of around 40,000 people. Our customers are already stressed because of the high cost of our recent upgrades. Any further cost will only aggravate the situation and the Town would have to borrow the money which might negatively impact our bond/credit rating because of higher debt.

Leesburg has already been taking initiatives with respect to storm sewer discharge. Specifically, the Town of Leesburg has an approved MS4 Plan that encompasses its entire 12.5 square mile boundary within the 64,000 square mile of the Chesapeake Bay Watershed. The Town has been implementing its current MS4 Plan since reapproval on July 9, 2008 for continuing to meet the six Minimum Control Measures as required in Permit #VAR040059, and for achieving measurable goals and milestones with implementation dates through the permit cycle ending on July 8, 2013. The Best Management Practices (BMP) chosen to meet the Minimum Control Measures is designed to meet Virginia's maximum extent practical threshold in a cost-effective manner. We are actively working on programs to improve the quality of the water for the communities in and around Leesburg. The Town recognizes the importance of maintaining our precious water resources and serving as stewards of the natural environment.

Some of the initiatives include:

- Educating and informing the public about urban runoff pollution
- Encouraging public participation in community and clean-up events
- Working with industries and businesses to encourage pollution prevention
- Requiring construction activities to reduce erosion and pollution.
- Requiring developing projects to include pollution controls that will continue to operate after construction is complete in the form of BMP.

The Town also works with its own internal departments and divisions to ensure that our maintenance and development projects are designed to reduce pollution.

Participation by the community is critical in preventing storm water pollution and keeping our water resources clean and safe for animals, plants and humans alike. The Town of Leesburg seeks to educate the public on ways individuals and groups can contribute to this effort.

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Leesburg has taken strides to identify and encourage protection and restoration of a natural open space system, which will include a network of ecologically valuable lands that will protect water quality, conserve and increase forest canopy, and provide passive recreation opportunities and habitat for the flora and fauna indigenous to this area.

As this relates to Leesburg, the town currently maintains in excess of 130 miles of storm drainage lines, over 6000 inlets, 1000 storm sewer manholes, 400 culverts, and over 600 storm sewer outfalls within the corporate limits. Town residents demand that the local government maintain the storm drainage infrastructure to a very high level. Within the Town are also over 75 public/private storm water management facilities which are owned and operated by various private entities. Some of the stormwater management facilities are owned and operated by the Loudoun County Public School System. Each year the Town must prioritize the level of maintenance required and permissible with the amount of local funding provided. As the Town's size increases and resources are spread thinner, this becomes more and more of a challenge. In order for the Town to implement the proposed EPA backstops for WLA of the proposed pollutants there must be flexibility for the Town to comply. Retrofitting in the Old and Historic District as well as many parts of the Town will be challenging due to the geographic, geologic, geotechnical, topographical, and historical nature of the Town's historic character.

The Town of Leesburg has been responsibly developing within its corporate limits over the past three decades. The Town's development is in conformance to the current Town Code, Town Plan, Zoning Ordinance, Subdivision and Land Development Regulations, and a very detailed Design and Construction Standards Manual. The Town's professional staff is committed to updating these documents regularly to closely monitor and provide the minimum Federal and State guidelines to ensure that the environment is protected.

Additionally, in developing the Chesapeake Bay TMDL, we must all remember that the current conditions in our urbanized watersheds developed over many decades with most of the land being privately owned. Plans and programs developed under the current initiatives need to take into account what can be achieved by the Town of Leesburg within the State of Virginia's governing laws. There are significant environmental benefits to redevelopment and transit-oriented development, as well as adverse environmental impacts associated with sprawl. If the costs of these stormwater management efforts are made to be too high, or if the stormwater management standards effectively become unattainable due to costs and unreasonable scientific measure, these beneficial redevelopment efforts will be hindered. A punitive focus on MS4 permits could ultimately prove detrimental to water quality by preventing development and redevelopment in already urbanized areas and driving new development into rural areas within the Chesapeake Bay Watershed.

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We have significant concerns with EPA's Draft TMDL and object to EPA's threatened "backstop" actions against WWTPs and urban MS4 permits. EPA currently proposes to cut Virginia's stringent nutrient wasteload allocations ("WLAs") currently set forth in Virginia's EPA-approved Water Quality Management Planning Regulation, 9VAC25-720, and Chesapeake Bay Watershed General Permit Regulation, 9VAC25-820 (collectively, the "Virginia Regulations"). EPA also threatens to further cut WWTP allocations to so-called "full backstop" levels, which would decrease the concentration basis further (3 mg/L TN and 0.1 mg/L TP at design flow) and possibly even the flow basis to past flow levels (2007 to 2009 average flow rather than design flow). This would reflect an unfair, punitive action by the EPA that would do little to advance the Bay cleanup, which necessarily depends on major nonpoint source reductions because the Bay is nonpoint source dominated system with roughly 80 percent of the nutrient load attributable to nonpoint sources. While the Draft Virginia WIP lacks clarity on what the exact requirements would be for urban and suburban stormwater, EPA's Draft TMDL defines an aggressive "backstop" allocation. We find these backstop measures to be inequitable if not illegal.

EPA is considering the potential WIP these potential cuts under a new EPA guidance letter on "reasonable assurance" and EPA's initial view that Virginia has given inadequate assurance that nonpoint sources (*e.g.*, agricultural sources) will reduce their nutrient loads according to plan. We disagree with EPA's initial view given Virginia's good track record of achieving nonpoint reductions. We also question whether EPA's unpromulgated reasonable assurance guidance is even legal given that it operates as if EPA's previously proposed but withdrawn reasonable assurance regulation, had actually been put into effect.

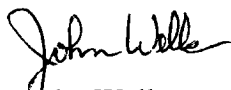
We understand that the Draft TMDL is fundamentally and materially flawed. These deficiencies are thoroughly documented in the comments of the Virginia Association of Municipal Wastewater Agencies, Inc. ("VAMWA"). We request that EPA fully consider and address all of VAMWA's comments, which we generally support and hereby incorporate by reference as if fully set forth herein.

In closing, what is distinctly missing from the EPA's Draft TMDL is any appreciation for the major commitments very recently made by the EPA and Virginia (the State's adoption and EPA's approval of the Virginia Regulations in 2005 and 2007) and the major financial commitments that local governments have made to implement these requirements including incurring significant public debt (typically with 20 to 30 year repayment terms) and constructing major new facilities (typically built to last 20 to 30 years). As an organization with a demonstrable commitment to clean water, we object to the waste inherent in EPA's threatened override of the Virginia Regulations and Virginia WIP through the Draft TMDL and its elements that relate to our WLAs.

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For further information, please contact the Town's Director of Public Works Mr. Thomas A. Mason, P.E. at 703-771-2790.

Sincerely,



John Wells
Town Manager

/Attachments

cc: Mr. Alan Pollock, VA DEQ (alan.pollock@deq.virginia.gov)
Mr. Russ Perkinson, VA DCR (russ.perkinson@dcr.virginia.gov)
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